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### Natural law in Aquinas and Grotius

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The present essay explores the significance of natural law for the world of today. It has the purpose of calling for the recognition of a universal ethics for modern times, indeed for all times. To perhaps many people living today, this purpose will seem either unrealistic or seriously in error. They will point out not only that different nations across the world fiercely oppose one another's values, but also that there is often significant disagreement over values *within* a society. In this situation, how can there be any hope in the possibility of a universal ethics? Furthermore, is it not a mistake to search for the answer in pre-modern thinkers like Grotius and Aquinas?

These questions are not impartial questions. They provide a voice for historical as well as moral relativity, that is characteristic of our times. By designating scholastic and early-modern philosophy as *pre-modern*, it is being claimed that the world as known to Grotius and Aquinas, is not the same as the world as we know it at the present day. This is intended to incline us to believe that the philosophy of earlier times can only be studied as part of a history of ideas, rather than debated as philosophical truth. Yet, there is no reason to accept this point of view. The world as it was known to medieval and early-modern thinkers was not less at war or divided over values, than our own. No less than our times, pre-modern times contained a wide range of philosophical opinion on various subjects, including ethics. Nevertheless, earlier thinkers believed that there was a good purpose in disputing over truth with other philosophers, in which they included the ancients such as Aristotle and Cicero. They did so because they shared a view that ethics is concerned with the identity of our ultimate end, and of the necessary means of securing it. Furthermore, they agreed with the ancients over the most general way to describe the end: happiness.

When they read and considered the works of the ancients, the writers of the medieval or early-modern periods did not regard themselves as learning only about archaic ideas of happiness. They recognised that both they and the ancients were involved in the same effort: the effort to discover and articulate truths of the human condition, and to interpret our ultimate end. Similarly, when we examine the works of so-called pre-modern writers, it is not with the aim of an historian reporting on antiquated doctrines, but of a philosopher in constructive dialog with other thinkers. For this reason, it is both appropriate and essential to refer to 'natural law' absolutely speaking, not a history of ideas.

This allows me to make an additional observation about pre-modern philosophy. Because all philosophers accepted that the end of human life is happiness (even sceptics), the purpose of philosophy was not to refute one's opponents, but to amend their efforts in the limited ways in which they went astray, e.g. by providing an incorrect understanding of human happiness. As a consequence, earlier thinkers did not regard the activity of ethics as a matter of opposing one's own truth to other rival truths. Whereas, thinkers of today frequently consider that each nation, or even every individual, has its own truth. A scholastic or late-scholastic philosopher would not have responded to the fact of disagreement in this way. They would have regarded the cause of disagreement as the existence, not of many truths, but of many kinds of good. Some of these they would dismiss as merely apparent, or false goods (i.e. evils desired due to the appearance of good), but they also acknowledged the existence of many real goods, for which each person may have a different degree of preference. For instance, one person may prefer to obtain knowledge and truth, whereas another may prefer sociable friendship. This produces the *appearance* that each person has their own truth about the good; yet in reality, they merely have different preferences concerning constituent parts of a good life that everybody agrees are good.

Accordingly, scholastic ethics divides into two parts. The first part concerns aspects of a good life that it is necessary for everybody to obtain, irrespective of their particular preferences and desires: this is the part Aquinas calls the 'public good' [*bonum publicum*].<sup>1</sup> It consists of duties (a) of the state; and (b) of all citizens within a state. I will elaborate on this below. The second part concerns the identity of our supreme end, as well as the properly best way to attain it.

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<sup>1</sup> See e.g. Aquinas, *Summa Theologiae* [hereafter *ST*] II-II.64.7c.

In this essay I propose to examine the first of these parts of ethics, to show how the scholastics' view is just as relevant to our own times. I will explain that the public good consists in something that every person values: the good of peace. The decision to limit the discussion to the initial part of ethics is not due (as might be suspected) to Aquinas and Grotius possessing opposing views of our ultimate good. In fact both thinkers agree on the supreme end we ought to pursue: to attain knowledge of God, and experience the beatific vision in the afterlife.<sup>2</sup> The decision is instead due to the scope of natural law, which deals only with *natural* human goods and ends, whereas the question of our ultimate end concerns *supernatural* goods such as God's blessings, heavenly joys and eternal rest. For this reason, natural law forms only one part of ethics.<sup>3</sup>

As an initial step therefore, I will explain that Aquinas and Grotius are not addressing separate subject-matters in their works on natural law, but considering the same subject-matter (Part I). Then, I will describe how natural law is concerned only with our natural (i.e. temporal) ends, namely the pursuit of virtuous goods in the present (Part II). Next, I will consider how peace is a universal end that everybody desires (Part III), and recount the virtuous goods that are required for peace (Part IV). Finally, I use these arguments to call for the recognition of a universal ethics for modern times.

## I. 'Catholic' and 'Protestant' Natural Law

From the late-nineteenth century, scholars have come to know Grotius as a founding father of international law.<sup>4</sup> This 'recovery' of Grotius's work had the result that scholars' interest in it was largely historical. Students of international law sought out the ways in which Grotius had anticipated or laid foundations for the modern idea of international obligations. At the same time, students of political history examined the texts to expose the beliefs that marked Grotius as an early-modern thinker, rather than a medieval scholastic.<sup>5</sup> As a transitional thinker, allegedly proposing new proto-modern understandings of law and obligation, he became a focus for political historians exploring 'ideas in context'. This meant that legal philosophers researching on Grotius first of all encountered his work as a primary example of 'Protestant natural law theory', opposed to the Catholic natural law tradition of Aquinas and the scholastics.<sup>6</sup>

Yet, the idea that Grotius's work describes a different kind of natural law to Aquinas, is nothing short of a misunderstanding. It is a misunderstanding first of all, because the subject-matter in question is not Grotius's or Aquinas's opinion, but the subject of that opinion: natural law itself. There are not two fields of inquiry, but only one. There is not one natural law that God instituted for Catholics, and another natural law that God instituted for Protestants. (Conversely, historians investigating Catholic and Protestant *opinions*, might divide the field of inquiry into separate parts.) But, secondly it is a misunderstanding because it relies on a misinterpretation of Grotius's text, as indicating a break of one sort or another with the earlier Thomist tradition.<sup>7</sup>

Those who have found a break between Grotius and earlier scholastic ethics, seem to have approached the text with some preconceptions. A modern editor of Grotius, Richard Tuck, merely repeats the view of Jean Barbeyrac, that Grotius 'broke the ice' after the long winter of ancient and medieval ethics.<sup>8</sup> But he adduces not one mote of evidence for Grotius's so-called radical departure from these earlier authorities. In fact,

<sup>2</sup> See e.g. *ibid.*, I-II.1-5; Grotius, *De veritate religionis Christianae* [Of the Truth of Christian Religion], II.9.

<sup>3</sup> This directly opposes Finnis, *Natural Law and Natural Rights* [hereafter *NLNR*] (2nd edn, Clarendon Press 2011), 437; see also 18, 23, 251, 280, 374. For Grotius's contrary view, see *De Iure Belli ac Pacis* [hereafter *DIBP*], I.2.5(1); I.2.6.

<sup>4</sup> See e.g. H Vreeland, *Hugo Grotius: The Father of the Modern Science of International Law* (Oxford University Press 1917); repeated in e.g. H Bull, *Hugo Grotius and International Relations* (Clarendon 1990), 2-3.

<sup>5</sup> See most of all R Tuck, *The Rights of War and Peace* (Oxford University Press 2001).

<sup>6</sup> For an example stressing Grotius's Protestant doctrines, see NE Simmonds, 'Protestant Jurisprudence and Modern Doctrinal Scholarship' 60 (2001) *Cambridge LJ*, 271.

<sup>7</sup> Tuck (n 5) is a prominent recent example of this; the earliest writer to insist on Grotius's break with the past was in fact Samuel Pufendorf. For another example, see Finnis, *NLNR*, 43-44.

<sup>8</sup> Grotius, *The Rights of War and Peace*, Tuck ed, (3 vols, Liberty Fund 2005), I.x-xi. All other references will be to the latin text of *De Iure Belli ac Pacis* [Of the Law of War and Peace]: note Tuck's edition translates (almost everywhere in the text) *iure* as 'rights', not 'law'. The word can bear both senses, but Grotius's usage remains close to that of the Thomists. Notice also that *iure* is singular, so Tuck's preferred title, 'The Rights of War and Peace' manipulates the expectations of the reader into anticipating a modern, rights-based discussion of morality, as opposed to the virtue-based ethics of the past.

Grotius's text, even more than Aquinas in the *Summa Theologiae*, refers to classical and medieval writers in support of his points, not the least, Aristotle and Saint Thomas.<sup>9</sup>

This practice of supporting doctrines by reference to earlier authorities, displays an intention not to produce innovations and 'break' with the past. It shows that Grotius understood himself to be interpreting and deciphering a subject-matter in common with his predecessors. Yet, it might be supposed that Grotius broke with Thomist philosophy in another way. According to this view, Grotius's break with the tradition of Aquinas consists in Grotius's having replaced Aquinas's conception of natural law with an inferior notion. Whereas for Aquinas, the natural law is an ethical inquiry into our ultimate good, and the steps required to attain it, Grotius (so it is said) substitutes the idea that natural law is deduced from the sociable nature of human beings.<sup>10</sup>

The exponents of this view make a presumption. They suppose that Grotius's purpose in writing *De Iure Belli ac Pacis* was to set out a comprehensive treatise on ethics, similar to that found in the Second Part (I-II & II-II) of Aquinas's *Summa Theologiae*. There, Aquinas considers and discloses our supreme end,<sup>11</sup> and discusses the virtuous goods we need to pursue in order to reach it, as well as the vices that lead us away from it.<sup>12</sup> Amongst this, he includes a treatise on law, with the aim of explaining how the ethical truths he has been expounding reflect the revealed truths of (Old and New) divine law, and how these truths are so inherent as potentialities to be grasped through practical reason, that even people who never possessed revealed truth about God's law still experience these truths in their reasoning and actions as a natural law.<sup>13</sup> The treatise on law also deals with a topic that requires discussion apart from questions about the virtues: the common good of the whole community. Even if people strive to attain moral goodness and avoid wrongful acts, they still require posited state laws e.g. to inform them of the civil rights of others and how to respect them.<sup>14</sup>

However, the *De Iure Belli ac Pacis* was intended to be considerably narrower than the entire theological ethics of Aquinas's *Summa*. In fact, it corresponds more or less to the material covered by Aquinas's treatise on law in the Prima-secundae, and (less comprehensively) the treatise on justice in the Secunda-secundae. Grotius clearly announces this intention by calling his book *Of the Law of War and Peace*. In this respect his work resembles a number of earlier scholastic treatises entitled *De Iustitia et Iure* or *De Legibus*, from which an unwary or unsympathetic reader can discern an overly narrow understanding of law (compared to Aquinas). Yet as with Aquinas, it cannot be presumed that an author's doctrine of natural law contains everything that author wants to say about the subject of ethics, particularly if (as with Grotius) he or she wrote other ethical treatises inquiring into the human good. The fact that a writer possesses a narrower definition of law than Aquinas, does not in the least signify that they have made a substantial departure from Aquinas. They would merely emphasise, even more strongly than Aquinas, that our lawful obligations to act with virtue do not form the whole of our duty to God.<sup>15</sup>

Thus, for Grotius no less than for Aquinas, natural law comprises an ethical inquiry into our proper ends. Yet because the scope of Grotius's text is primarily concerned with the topic of peace, he considers only aspects of natural law that pertain to peace, and the vices that cause its absence. This can give the impression that Grotius's moral theology (i.e. an investigation into our supreme end and the ways needed to attain it) is considerably inferior to that of Aquinas. In fact, it shows a failure by modern commentators to appreciate the significance of the title, *De Iure Belli ac Pacis*.

In another attempt to discover fundamental differences of approach between Grotius and Aquinas, modern-day Thomists have accused Grotius of departing from Aquinas's careful eudaemonism, by suggesting that

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<sup>9</sup> See *De Iure Belli ac Pacis* [hereafter *DIBP*], Prolegomena §§ XLIII, XLVI & LIII.

<sup>10</sup> See for example A Brett, *Changes of State* (Princeton University Press 2011), 69-86.

<sup>11</sup> *ST* I-II.1-5.

<sup>12</sup> On virtues, one should include all of I-II.6-70 & II-II.1-170; on vices see I-II.71-89.

<sup>13</sup> See generally *ST* I-II.90-108.

<sup>14</sup> *ST* I-II.90.2c & ad 3.

<sup>15</sup> Apart from his *De Veritate*, one should also look to Grotius's treatises *Via ac Pacem Ecclesiasticam* [The Way to Religious Peace], and his two Commentaries on the Old and New Testament.

natural law is apprehended by considering the conformity or disconformity of an act to our 'rational nature'.<sup>16</sup> This appears to convert an ethical inquiry into an anthropological inquiry.

It should be observed that the modern-day Thomists have every motive to uncover important differences that make Grotius's theory inferior to that of Aquinas. For, they wish to reinforce the impression that Aquinas's philosophy is the true philosophy, or *philosophia perennis*, of the Catholic Church, and that later writers who rely on Aquinas for their natural law theories (such as Vasquez, Suarez and Grotius) are inferior copies, who corrupted Aquinas's insights in one way or another. As a result, this ambition discouraged the modern commentators from reading Grotius's texts with the same level of care they devote to Aquinas. They emphasised passages which seem to confirm Grotius's novelty, and read them out of their context, without diligently searching for passages which explain or qualify the seemingly novel remarks.

The passage mentioned above is one example. In fact, it shows that Grotius's conception of natural law is not very dissimilar from that of Aquinas. For, after defining natural law as 'a dictate of right reason, indicating by its conformity or disconformity with rational nature the moral shamefulness or moral necessity inherent in an act, and consequently that it is either forbidden or commanded by God',<sup>17</sup> he immediately states: 'The acts about which such a dictate is given, are *in themselves* either rightly due or wrongful, and are *therefore* to be understood as either commanded or forbidden by God...'<sup>18</sup> The italicised words draw attention to the fact that it is the innate quality of an act, in being directed toward a good end or a bad end, that determines its moral righteousness or wrongfulness. The moral quality of an act makes it fitting or unfitting to a rational nature, but its naturalness or unnaturalness is not the cause of its moral quality. In fact, Grotius particularly distinguishes between 'primary precepts of nature' (such as the effort to preserve oneself) and 'the conformity of things to reason ... in which the moral good [*honestum*] is the object', which 'ought to be esteemed more highly' than those things that conform to the primary precepts alone.<sup>19</sup>

Furthermore, as a Protestant natural lawyer Grotius does not possess a different understanding to Aquinas of our knowledge of moral truths. Historians of political thought have emphasised the importance of the principle of *sola scriptura*, i.e. the principle that our knowledge of truth about God and ethics comes solely from reading the scriptures. Yet, Grotius affirms that our knowledge of God (and moral truth) 'is implanted in us, partly by reason, and partly by perpetual tradition'.<sup>20</sup> Only the latter is a reference to divinely revealed law, confirmed by 'numerous arguments and miracles.'

As is evident from these remarks, there is no watershed between Aquinas and Grotius due to a so-called breach between Catholic and Protestant natural law. In the following section, I will show that Grotius and Aquinas additionally agree about the substance and purpose of natural law.

## II. The Subject-Matter of Natural Law

Grotius's Preliminary Discourse to *De Iure Belli ac Pacis* announces its scope and aim: to elaborate the content of 'the law that obtains among many peoples, or intercedes between the rulers of peoples.'<sup>21</sup> The sources of this law derive from (i) nature; (ii) institutions of divine command; and (iii) customary behaviour [*moribus*] or tacit agreement. It is in view of the third of these sources that Grotius limits discussion to law among 'many peoples' rather than 'all peoples'. In one way, this has the result that Grotius's discussion is broader than the treatment Aquinas gives to law in the *Summa Theologiae*, because it considers a source of laws (*mores*) that Aquinas refers to only in passing. But in another way it is narrower, because the inclusion of *mores* pertains to matters about which there can be reasonable disagreement, where lawful obligations are concretised through

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<sup>16</sup> This is essentially Finnis's objection (see the reference in n 7).

<sup>17</sup> *DIBP* I.10.1. The Tuck edition renders *ius naturale* in this context as 'natural right' (presumably to strengthen the case from Grotius's innovation).

<sup>18</sup> *Ibid*, I.10.2 (my emphasis). The Tuck edition (which incorporates an older translation of the French edition of the original Latin text) renders *debiti* and *illiciti* as 'lawful' and 'unlawful', which helps to obscure the point that the rightfulness or wrongfulness of actions is not *caused by* a divine command, but rather *the cause of* such a command. See also the Prolegomena (preliminary discourse) § XI (the famous *etiamsi daremus* passage).

<sup>19</sup> *Ibid*, I.2.1(2); *De Veritate* I.23 & III.12.

<sup>20</sup> *DIBP*, Prolegomena § XI.

<sup>21</sup> *Ibid*, § I.

specification.<sup>22</sup> Such created laws are, as Grotius implies, not universally detectable by reason, and so obtain only among peoples who introduce them through a kind of agreement.

Readers of Aquinas have sometimes had reason to complain that his treatment of natural law does not give very specific guidance on practical questions of justice and obligation. To mention only one recent example, John Finnis laments that 'Aquinas's account of [moral reasoning] is, at best, highly elliptical, scattered, and difficult to grasp, and at worst, seriously underdeveloped.'<sup>23</sup> An instance of this can be seen in Aquinas's discussion of tyrannical laws. He holds that the proclamations of a tyrant do not possess the true characteristics of proper law, and are not binding in conscience; yet he says that even tyrannical laws share the property of seeking to make citizens conform to goodness, though in a perverted way, and thereby achieve a kind of order for the community.<sup>24</sup> Consequently, it may be necessary for a person to abide by immoral laws in order to avoid creating civil disturbance.<sup>25</sup> Yet, this does not tell us very much about the conditions in which a person can legitimately resist an unjust law, versus circumstances where they ought to obey the law even in the face of injustice. Reasonably, it could be supposed that Aquinas wants to distinguish situations where I should give up my just rights, to preserve public peace, versus situations where I am legally obligated to commit an immoral act (e.g. depriving another of their rights). But this assumption does not offer very concrete guidance to a person who (say) is faced with sacrificing property rights that will become their children's inheritance, against immediate considerations of public order.

By contrast, Grotius's discussion is aimed at specifying a particular content for the law amongst peoples. This enables him to give more specificity to the lawful demands upon peoples and lawful rulers. For, his immediate aim is not theological (identifying the inmost demands that apply to all consciences) but political (explaining how such demands apply within nations and between nations). In this, Grotius follows earlier scholastic commentators like Molina, Vasquez and Suarez, who expanded Aquinas's relatively brief treatment of law (I-II.90-108) into treatises on law and justice spanning multiple books or volumes. By comparing the length of Aquinas's and Grotius's discussions, we can see how Grotius is concerned to give much more detailed guidance regarding our natural obligations of peace and justice.

Aside from this difference, Aquinas and Grotius share a similar view of the scope and purpose of natural law. It is concerned with the virtuous duties of justice, temperance, fortitude etc that natural reason informs us are required for a good life in the temporal world, as distinct from our supernatural duties toward God, which are only discoverable to us through divine revelation and Grace. This does not mean, as some commentators have asserted, that natural law is entirely secular. Our natural reason is sufficient to inform us of the existence of a Creator of ourselves and of the world, as Aquinas and Grotius both attest, just as the fact of our own existence allows us to believe that our Creator is a loving God. In Aquinas's words, this gives us an inclination to know the truth concerning God;<sup>26</sup> but reason alone is insufficient (without the aid of Grace and revelation) properly to understand and discover the truth. For example, in the New Testament, Jesus reveals that the Scribes and Pharisees have an utterly wrong view of God, even though they know and believe in Him. Through revealed teachings (e.g. the Sermon on the Mount) and examples drawn from Jesus's life, we gain the correct understanding that the way to God lies in the workings of charity, alongside the other theological virtues of faith and hope: the so-called 'infused' virtues which depend on divine Grace.

Natural law refers to the part of ethics that is discoverable to human reason alone. The ancient writers provide a good example of philosophers who arrived at truths about ethics without the assistance of divine revelation. Moreover, Aristotle and Plato (to name only two) both affirm that God exists, and that human beings should tend toward Him, even though they do not possess correct knowledge of the Holy Trinity. This permits later scholastic philosophers to draw upon ancient works as a genuine source of insight into ethical truths. They share the belief that our final natural end consists in happiness: in ancient Greek thought, *eudaemonia*, or in Aquinas's terminology, *felicitas* (or as he often expresses it, *beatitudo imperfecta*, as opposed to the perfect beatitude experienced by the saints in heaven).

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<sup>22</sup> See e.g. *ST* I-II.95.2c & ad 3; *DIBP* I.1.10.

<sup>23</sup> Finnis, *NLNR*, 46; see also 34.

<sup>24</sup> See *ST* I-II.92.4 ad 3; I-II.96.4c.

<sup>25</sup> *Ibid*, I-II.96.4 ad 3, also I-II.97.1 ad 2; II-II.117.6c.

<sup>26</sup> See I-II.94.2c; on the existence of God, see I.12.1c; on God's love see I.20.2c & ad 1.

Yet, they were aware that it is possible for human beings to be gravely mistaken about the character of the ultimate end. Although everybody agrees that it consists in happiness, they disagree about what happiness is. For example, Aristotle remarks that the uneducated think happiness consists of pleasure, or riches, whereas others believe that it is found in honour or fame.<sup>27</sup> The ancient and medieval philosophers reject these images of happiness as deficient, instead defining genuine happiness as a life centred around the practice of the virtues. The possibility to act against one's true good explains how a part of ethics consists in a natural law. We are naturally subject to a law in one sense, because the reason for undertaking any action is to obtain some end, that is considered as good;<sup>28</sup> and we are subject to a law in another sense, because we ought to act for the sake of ends that are truly good rather than ends that are merely apparently good (such as sensation or pleasure).

Modern writers tend to regard as antiquated the idea that there are human goods that are objectively good irrespective of personal opinions. Utilitarian thinkers offer one example of the belief that all goods are merely apparent goods. In the following sections, I hope to show that this belief is mistaken. But first, my present concern is to show that Aquinas and Grotius substantially agree on the character and purpose of natural law, and how it causes us to seek a good life. They would have concurred in believing that every person is enabled to distinguish properly good ends from actually wicked ones, at least to some degree. For, the natural law is an 'imprint' on a rational nature of eternal law, i.e. God's plan for the world and all things, from which we 'derive our inclinations to our proper acts and ends.'<sup>29</sup> This brings together the two senses in which we are subject to a natural law, mentioned in the preceding paragraph: as a 'participation of eternal law in the rational creature', we have imprinted upon us inclinations to proper acts and ends; and, by acting in conformity to rational nature, we act for the sake of what is properly good rather than a mere simulacrum of goodness. As I commented earlier, Grotius shares this belief that rightful acts are in accord with our rational nature.

Both Grotius and Aquinas mention in particular one inclination, the inclination to live at peace in society, as being peculiar to *rational* nature, as opposed to inclinations that we have in common with other animals, such as the desire for self-preservation, or to beget and raise offspring. As Grotius emphasises, this inclination is not of living in society 'in any way whatever', but specifically 'peacefully, and ordered according to human intelligence.'<sup>30</sup> Or as Aquinas puts it: to avoid causing offence to those with whom one ought to live harmoniously [*debet conversari*].<sup>31</sup> That is to say: social peace is not to be considered as only a necessary means to pursuit of one's private ends. It is a positive obligation of every person to seek peace with all others, and to practise the virtues that contribute to peace: above all justice, but also other moral virtues as we shall shortly see.

Modern scholarship on Aquinas and Grotius pays little or no attention to the importance of virtue.<sup>32</sup> Yet, its centrality is clearly seen if we only consider that the whole of Aquinas's moral theology in the *Summa* (i.e. the entire *Secunda pars*) is devoted to identifying the virtuous dispositions and choices which lead us toward our supreme end, and the vices and sins that lead away from it. Interpreters who assume that Aquinas's whole account of ethics is contained in his doctrine of natural law, do not have a strong incentive to explore questions of the virtues, as this will seem to relate to the interior act of conscience with which a person

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<sup>27</sup> See Aristotle, *Nicomachean Ethics* I.5.1095b-1096a. Tuck regards Grotius as having made a decisive break with Aristotle, despite what Grotius says at *DIBP* Proleg § XLIII (i.e. that Aristotle holds the most exalted place among philosophers), by rejecting the doctrine of the mean. This overlooks the places where Grotius employs the doctrine, e.g. I.2.1(3), where he carefully explores the types of action which do and do not involve a mean. Nor was this new: see Aquinas, *De Virtutibus* I.13.

<sup>28</sup> See *ST* I-II.94.2c; I-II.91.2 ad 2; Suppl. 98.1c & ad 2 (evil does not move the will except insofar as it is thought to be good); see also *Sent* IV.49.1.3.

<sup>29</sup> *Ibid.* I-II.91.2c; also I-II.94.6c & ad 1 (the most basic precepts of natural law cannot be expunged by sin). Grotius also mentions the regulation of instinct by 'a kind of intelligent extrinsic principle', as well as 'an [internal] faculty of knowing and acting': *DIBP* Proleg § VII.

<sup>30</sup> See in particular *DIBP* Proleg § VI; also § VIII on care or stewardship of community [*societatis custodia*]; § XII.

<sup>31</sup> See *ST* I-II.94.2c.

<sup>32</sup> On Aquinas, see Finnis, *NLNR*, 90-91, 422; his later book on Aquinas contains many references to the virtues, but they remain (as *NLNR* put it) mere 'modes' of responding to reasons: *Aquinas: Moral, Political and Legal Theory* (Oxford University Press 1998), 124 & 107. For a recent account of Aquinas in which the virtues are restored, see J. Porter, *The Recovery of Virtue* (WJKP 1990). As an example of the neglect of virtue in Grotius, see Tuck, *The Rights of War and Peace* (Oxford University Press 2001) (aside from so-called 'civic virtue'), or JB Schneewind, *The Invention of Autonomy* (Cambridge University Press 1997), ch 4.

performs their duty. Because their attention is trained most of all on the external act, this causes modern scholars to look for the end or good of action in some extrinsic object which the act brings about. It diminishes the idea of true human ends or goods as consisting in virtuous goodness.

The instinct of peaceful sociability provides one clear example. Modern Thomists such as Finnis create the impression that the good of sociability is a *pre-moral* good, which may figure in one's choices to a greater or lesser extent.<sup>33</sup> Perhaps this was done with the conscious aim of overturning an image of Aquinas as a paternalist insisting on the goodness of only one way of life: there are many good ways of living that conform to natural law. So far, the modern view is correct. Aquinas is not a paternalist for whom there is only one good way of life. However, he would not have regarded morality as merely a question of how reasonably one selects and pursues pre-moral ends. The profusion of good ways of living is the result of many paths by which our circumstances can lead us to virtue. For example: an outgoing and gregarious person will find many opportunities to express their sociable nature through acts of love and kindness; whereas, a shy and reserved person is not absolved of the duty of neighbourly love, but can find other ways of expressing it, for instance in print by joining a scholarly debate, or by giving alms to good causes. A person who fails to demonstrate neighbourly concern for any other person, is not simply missing out on a (pre-moral) human good — as Finnis's discussion seems to imply — but exhibits the vice of *immisericordia*, that is, they are lacking the virtue of compassion. As this shows, sociability is a virtuous good not a pre-moral good.

It is likely that the same legalist view of Grotius's ethics is responsible for his modern commentators' tendency to sideline the importance of the virtues. But there is also an additional reason why the modern commentators do not wish to emphasise the virtues in Grotius's ethics. For, this would not fit with the view that Grotius 'broke the ice' after the long winter of ancient and medieval ethics. Yet, if we look at how Grotius introduces the subject of natural law, the place of the virtues is evident. He mentions two respects in which human understanding forms the origin of law [*iuris*] within us: the first is our grasp of how to live peacefully in society, and of the means by which each person must care for the peace of society (i.e. the virtue of justice — see Part IV below); the second is our ability to discern the consequences of actions, and to form judgments in light of them. Grotius immediately makes clear that this is a reference to the virtues.<sup>34</sup> He does this by naming some of the ways in which our judgment (of whether something accords or is disagreeable to our nature) can become corrupted: by impure delight in immediate pleasure; by fear, or by excessiveness or violence in one's passions. Each of these deficiencies is a vice which demands correction by the practice of the corresponding virtue.

In order not to multiply examples, I will mention only one further instance where the centrality of the virtues to Grotius's text is made clear. This is near the beginning of Book I, when he states that the inquiry concerns the question, when wars can be just, and what can be done in war without committing injustice.<sup>35</sup> Here, Grotius informs his reader that 'war' is to be taken in its widest sense: it extends to every kind of dispute between two individuals, as well as between groups and nations, which disrupts the peace between them.<sup>36</sup> Justice (and every other virtue connected to peace)<sup>37</sup> is the virtuous good by which people are restored to peace, or through which peaceful relations between persons are preserved. Again, today's readers will miss the significance of Grotius's concern with justice, if they come to the text expecting to find only the beginnings of a modern idea of international law (i.e. justice between nations).

One should not be misled by the focus taken by Grotius in the *De Iure Belli*, or by Aquinas in the 'treatise' on laws in the *Summa*. It would be easy to assume that both figures regarded our natural, temporal happiness as consisting in a life of justice and peace. This ignores the Christian dimension of their work, which emphasises contemplation and worship of God, through good acts and prayer. However, neither writer regarded the purpose of the temporal community as coercing people to pursue their supreme end. The power of temporal communities is limited to enforcing peaceful actions that are necessary for the safety and internal tranquility of the community.

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<sup>33</sup> See in particular *NLNR*, 59, and more generally ch V.

<sup>34</sup> See *DIBP* Proleg § IX; also § XIII; on justice's role, § XLV. See also *De Veritate* II.14 (on the use of temporal goods).

<sup>35</sup> *DIBP*, I.1.3(1); see also the important explanation of virtue and its end, I.1.17.

<sup>36</sup> *Ibid*, I.1.2(1), I.3.1; I.4.1; II.1.1-2.

<sup>37</sup> Grotius is referring not only to 'particular justice' (refraining from another's right) but also to 'legal justice' in Aristotle's sense, i.e. the virtue which includes all other virtues insofar as they are orientated to the common good: see Proleg § XLV.



Even these very brief remarks indicate that Grotius and Aquinas were not propounding radically divergent ideas of natural law. In fact, Grotius offers a good example of an ethicist whose natural law doctrine is close to that of Aquinas. But, this similarity does not prove that there are any universal human ends, or to use the expression preferred today, *human goods*. Many people living today believe that it has become impossible to point to any universal human goods, because all people disagree about what is good, or even right. I will now attempt to show that this significantly exaggerates the disagreements that people have: our disagreements about what is good do not extend to everything, as modern-day writers seem to suggest.

### III. A Universal End For All: Peace

It was apparent to the thinkers of earlier times, that everybody desires peace. And even further: everybody realises and wishes that members of the community must seek peace together, both within their community and with other nations.

The best way to demonstrate this truth is by considering the situation in which a community lacks peace. If there is no peace within a community, the possibility to pursue any other human good disintegrates. Indeed, the basic existence of every person is threatened. Thus, all can agree on the goodness of peace, even if they disagree about the ultimate end. This does not rule out — as is evident from world politics — that different persons or nations may disagree concerning the most appropriate way to peace. For instance, even those who wage aggressive wars do so with the aim of instituting a peace, though on unjust terms. Yet tyrants, as well as foreign conquerors, cannot impose peace without gaining the cooperation of members of the community (including by fear) in upholding peace. For there will not be peace unless every person contributes their effort, by observing their legal duties, and refraining from criminal acts.

This reveals that the end of peace is a universal end: even the very wicked desire peace on their own terms, in order not to have to contest with enemies over the things they desire to have. For, a wickedly immoral person will at least desire that others do not obstruct their activities, and at worst to dominate others so that they will carry out the will of their oppressor, without resistance. Exactly because peace is necessary for every end, it is objectively valuable for every person without exception, no matter what their conception of their ultimate end. By calling peace ‘objectively valuable’, I mean that it is of vital importance for every person even if they fail to perceive its importance. A wicked person still values peace, even if they do not recognise that it forms part of the situation they aim to bring about.

For the same reason, peace is not a culturally or politically relative goal. Every ideology has the purpose of instituting a particular way of living, and of becoming accepted by a community. Thus even the most intolerant ideology strives to create stable and peaceful conditions, in line with its values. Furthermore, this aim remains unchanged even if a regime is imposed upon a people against its will. Likewise, the very conception of a ‘people’ or ‘community’ implies the existence of peaceful internal conditions. Otherwise, as Grotius says, a contending and unruly population has not yet even united into a nation.<sup>38</sup>

Aside from properly wicked individuals, everyone realises that it is necessary to contribute to social peace, at least in the most minimal sense by refraining from breaking the law. They understand that peace is not a good that any person can achieve for the community on their own: it requires the common will and effort of the people as a whole. This is one reason why Grotius, in the remark just quoted, talks of a people being *united* into a nation.

However, most people wish for more than a collective decision not to break the law. Although, as Grotius says,<sup>39</sup> it is not possible to be friends with everybody, the majority of people realise that a good life consists of very close relations with a few others (e.g. one’s family or partner), and amicable relations with others. This includes e.g. the willingness to enter into agreements with others, even for one’s own enrichment, but also

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<sup>38</sup> Ibid, I.1.1. (Recall St Augustine’s comment that a ‘people’ is defined by their agreement over the objects of their shared love: *De Civitate Dei*, XIX.24).

<sup>39</sup> Ibid, Proleg § X.

more complicated political arrangements to produce common goods for the entire community (such as schools and hospitals), as I will explain below.

#### IV. A Necessary Foundation for Peace: Justice

This explanation allows us to see that at least some of our duties of peace consist in duties of justice. Aquinas for example, comments that works of justice are directed to the observance of peace between persons, by the fact that each person is undisturbed [*quiete*] in their possessions.<sup>40</sup> He explains that, in respecting the right of another person, we *indirectly* contribute to the common good.<sup>41</sup> Whereas, by ensuring that *all* our actions conform to justice, we make a direct contribution to the common good.<sup>42</sup> The common good that is served by our acts of justice toward others, is the good of peace. This can be seen in the specific acts of justice that Aquinas expressly discusses, including: honouring one's debts, refraining from harms against another's person and property, not defaming or bearing false witness, and avoiding acts of disloyalty to one's community.<sup>43</sup> In fact the very definition of justice, according to the scholastic writers, is (in Grotius's words) 'refraining from that which pertains to another',<sup>44</sup> or in other words, leaving them in *peace*. The connection of justice with peace is also discernible in the classical expression, 'rendering to others their proper right.'<sup>45</sup> For, as Grotius observes, this is really the demand that one either (a) leave another undisturbed in the enjoyment of what is theirs, or (b) *restore* to another anything of theirs that we possess, including any profit derived from it. Furthermore, it is a demand (c) to fulfil one's promises that are owed to another, and (d) to compensate another for harms brought about due to one's fault.<sup>46</sup>

Each of these acts helps to maintain social peace. By restoring justice between the parties, sources of contention are extinguished and a peaceful order between persons is re-established. On the contrary, the commission of an unjust act, is an act contrary to social peace. Accordingly, the infliction of penalties (by the state) upon wrongdoers is necessary to restore the balance of justice in society.<sup>47</sup> Therefore, Grotius warns that resisting the lawful punishment of the state (e.g. by absconding or denying one's criminal act) offends against the internal tranquility and quiet condition of the state.<sup>48</sup>

It is often overlooked that, in addition to upholding peace between persons, just acts are acts by which each citizen assists the state government to protect the good and suppress evils.<sup>49</sup> For instance, by paying taxes a citizen enables the state government to employ a police force, or possess a standing army to protect against invaders. But this is not the only example. Grotius mentions the contribution to social peace of those who resolve their differences via state courts or tribunals, rather than resorting to 'private war'.<sup>50</sup> Furthermore, each person's duties to instil peace include forgiving minor faults and refraining from demanding satisfaction of one's right in relation to trivial causes.<sup>51</sup> By limiting lawsuits to very serious matters, citizens prevent the state from being overwhelmed by an impossible number of complaints. In this respect therefore, the duty to act with justice for the sake of the common good, also includes the need to practise the virtue of fortitude [*fortitudo*].

In fact, it was accepted by the scholastics and ancient philosophers that so-called 'general' justice (i.e. the duty each citizen owes to the common good, as opposed to particular individuals) incorporated acts of all the virtues. This can be seen e.g. in the demand not to lend at usury,<sup>52</sup> or to demand excessive compensation (i.e. the virtue of moderation [*temperantia*]), and in the forgiveness of wrongs or waiving of debts against the poor;

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<sup>40</sup> Aquinas, *Summa Contra Gentiles* [hereafter *SCG*] III.34.2; see also *ST* II-II.29.3 ad 3; Grotius, *DIBP* I.2.7.

<sup>41</sup> *ST* II-II.58.7 ad 1 & 2.

<sup>42</sup> *Ibid.*, II-II.58.6c.

<sup>43</sup> *Ibid.*, I-II.100.5c; II-II.122.6 ad 2.

<sup>44</sup> The formulation is Grotius's: *ibid.*, Proleg. § XLIV.

<sup>45</sup> See e.g. Aquinas's use of the phrase, *ST* II-II.58.1c.

<sup>46</sup> See *DIBP* Proleg. § VIII.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, I.2.5; II.20.9; see also Aquinas's remarks on perjury and false suits, *ST* II-II.38.1 ad 3.

<sup>49</sup> *Ibid.*, I.2.7(9); I.3.6.

<sup>50</sup> *Ibid.*, I.3.1.

<sup>51</sup> *Ibid.*, I.2.10; also see *ST* I-II.96.4c.

<sup>52</sup> *Ibid.*, II.12.20-21; *ST* II-II.78.3 ad 2.

as in the virtue of mercy [*misericordia*],<sup>53</sup> not to mention the need to orientate one's practical deliberations to good ends rather than evil ends (the virtue of *prudencia*).<sup>54</sup>

More generally, Grotius and Aquinas both understand the duty of justice to encompass not only abstention from violence against others, but also a prohibition on war by a people against their lawful ruler.<sup>55</sup> Indeed for Aquinas (as for Grotius) the agreeability of one's behaviour with these precepts of justice depends upon a positive force: sociability, or love of others. Aquinas's word *diligere*,<sup>56</sup> distinguishes this 'sociable regard' found in all peoples from the more demanding benevolent love of one's neighbours [*caritas*] preached by the Scriptures as a duty for all Christians. This explains that peace is possible for all nations, not only for Christian peoples.

The positive love of others, above mere toleration of their existence, underlines an important point: almost all of the goods that arise out of social peace come from interaction between citizens rather than the state. For the avoidance of any doubt, 'love' as used here extends to the willingness to trust others sufficiently to enter into economic relationships with them, such as contracts of employment. For most societies, important goods like health and education (even where they are state-funded) arise from voluntary transactions, rather than e.g. a state law compelling talented individuals to become doctors or teachers.

By studying the above examples of just acts, we can see that acts that disrupt social peace are not confined to prohibited acts under the state criminal law, such as theft or murder. Additionally, failing to keep one's duty to another damages social peace, or to put it more positively, observing one's civil duties makes a contribution to social peace. This signifies the area known to ancient and early-modern philosophers as *commutative justice*. It would include e.g. fulfilling one's contractual promises, giving compensation for harm, and returning that which belongs to another, as in stolen property. As an example where restitution prevents civic disturbance, a person can publicly apologise to another for dishonouring them (i.e. restore their good name), rather than inflaming the situation by continuing with the allegation.<sup>57</sup>

The above duties are all duties of citizens within a state. By observing them, each person makes an important contribution to social peace. In other words they form one way in which members of the community seek after peace together. But if a community is to achieve peace within its borders, it is also necessary for the state government to enact laws for the sake of peace.

First and foremost, the state has to enact laws that establish public safety, by prohibiting and punishing murder, violent attack, rape and so forth. Then, it has to outlaw serious forms of dishonesty, such as theft, fraud, extortion, etc. Finally, the state has to create laws that compel every member of the community to fulfil their obligations e.g. by respecting one another's rights, performing contractual bargains, compensating for harms, and so on. By doing this, the state ensures the internal tranquility of the community.

At the same time, it is important for the state to maintain a distinction between criminal acts, which invite punishment, and civil wrongs and harms which attract only a civil remedy. Think of the difference between someone who breaches a contractual agreement in order to secure a better bargain with another, and someone who commits fraud: in the first case, the person seeks an economic advantage by causing harm to a specific person (possibly a legal person), an economic advantage that is diminished by having to perform a *restitutio*, i.e. an act cancelling out the harm done to the other. The harm done to society is vastly more remote, as the existence of a civil remedy is sufficient to deter the majority of citizens from dishonestly breaking agreements. In the case of fraud, the harm to society itself is much greater and more immediate, for the commission of fraud is an attempt to deceive every person: for example, by artificially raising prices, or by ensuring that the transactions people enter into are not the ones they believe they are entering into. A criminal penalty (such as a fine) is appropriate because the injury is to society as a whole.<sup>58</sup> As a contrast, the

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<sup>53</sup> See e.g. *DIBP* II.12.18; III.18.4; III.19.3.

<sup>54</sup> *ST* II-II.58.6c 7 ad 4.

<sup>55</sup> *Ibid*, I.4.2 (unless the ruler has become an enemy to all the people: I.4.11); Aquinas, *ST* II-II.38.1c; II-II.40.1c; II-II.41.c & ad 3; II-II.42.1c.

<sup>56</sup> *ST* II-II.29.3c.

<sup>57</sup> See *ST* II-II.62.2 ad 2 (NB. the dishonourable revelation does not have to be a lie); *DIBP* I.2.7(5).

<sup>58</sup> *DIBP* II.20.9.

historical use of debtors' prisons illustrates the injustice of using a punishment designed to protect the public (imprisonment), as a civil remedy to redress a private harm (defaulting on one's debts).<sup>59</sup>

Civic harmony [*tranquillitas*] is one component of social peace within the state. In addition, two other elements of peace have to be ensured. First, the state government must defend the community from external enemies (e.g. by seeking peace with other states, or by maintaining an army). Second, the state must ensure at least a minimum level of prosperity for every citizen, so as to avoid a situation where people are obliged to fight one another over basic resources. Both conditions give rise to duties of justice that on first glance do not seem to be essential for peace, or in other words, both conditions give rise to duties indirectly related to peace. As an example, the payment of taxes or rates assists the state to create an army, or to provide subsidies for the most poor. Both Aquinas and Grotius would regard duties of this kind as arising from positive state law, rather than natural law.<sup>60</sup> For, they represent a determination of natural law according to the circumstances of particular times and places. This has the result that a modern scholar who searches for a writer's views on justice, will gain only a partial and thus distorted image if he or she confines their attention to what that writer says about natural law. In addition, a scholar must also look to a writer's discussion of the law of peoples [*ius gentium*], as well as the positive law enacted by the state [*ius civile*].<sup>61</sup>

For present purposes however, it is only necessary to note that, by seeking together the common human good of peace, persons within a community are required to practise the virtues, i.e. the virtue of justice along with all of the virtues connected to justice. I will now briefly turn to discuss what this means.

## V. A Universal Ethics for Modern Times

The foregoing arguments establish the existence of at least one universal human good: the good of peace. Then, they demonstrate the existence of further common goods, namely virtuous goods required in order to uphold social peace. Among these virtuous goods, justice is the most important and pre-eminent. Even those who act unjustly toward others, value the virtue of justice. For, even the most wicked person wants to be treated with justice, in the sense that they do not wish to receive less than is due to them, or to be punished more severely than is due.

I propose that we can speak of the virtuous duties of all persons in society, as outlined above in Part IV, as a *core morality*. As explained in the preceding paragraph, the core morality is a *universal* morality: it holds good for all times and places, and applies to all persons without exception.

In a similar way, there is also a core morality that binds state governments. For state governments also possess duties of justice toward their citizens, as outlined above. To be more precise, the individual persons who hold positions within the government and bureaucracy possess: (i) duties of justice for the sake of the common good, as ordinary persons (i.e. the core morality); and (ii) duties of justice to exercise their power and office diligently and only for the sake of the common goods of peace, justice, safety and prosperity.

It should not be forgotten that the core morality binding upon each person, is only a minimal morality. It represents the least amount of virtue that each person is required to exhibit. Yet, it was very apparent to Aquinas and to Grotius that every person ought to strive after virtuous goods in excess of the minimum required for peace. For example, Christians are required to practise the virtues of charity, liberality and beneficence (to name only a few). It is because these virtues seek after a higher end than social peace (namely, our return to God in the afterlife), that they fall outside the core morality, and also the scope of the present discussion. Grotius and Aquinas would not have considered that such virtuous goods are any less universal than the virtues of justice and peace (sociability); but their discussion like the present one, attempted to treat them initially separately from their treatment of natural law in the strict sense.

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<sup>59</sup> For some very useful remarks see Finnis, *NLNR*, 188-93.

<sup>60</sup> See e.g. *ST* I-II.95.2 ad 3.

<sup>61</sup> Thus for example, a scholar who looks for Grotius's views on justice should examine his book, *Introduction to the Jurisprudence of Holland*.

Nevertheless, the present essay has had the limited purpose of clarifying the idea of natural law, and demonstrating its relevance for the modern age. By doing so, it calls for the recognition of a universal ethics for modern times — in fact, for all times. The conclusion of this essay is therefore the starting-point, rather than the end, of ethics.